Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Honourable James Henry Young (Defendant) v. Alexander Adams (Plaintiff), from the Supreme Court of New South Wales; delivered 29th April 1898.

Present:

LORD WATSON.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Respondent entered the service of the Government of New South Wales in the year 1885, as a road surveyor, at a yearly salary. He continued in their employment, in that capacity, until the 30th June 1895, when he was summarily dismissed without compensation.

During the period between the original engagement of the Respondent and his dismissal, the rights of Civil servants in the Colony of New South Wales were governed by the Colonial Act 48 Victoria No. 24. In the appeal *Gould* v. *Stuart* (App. Ca. 1896, p. 577), it was held by this Board, affirming the judgment of the Supreme Court of New South Wales, that the power generally possessed by the Crown to dismiss a Civil officer at pleasure was restricted by the provisions of the "Civil Service Act 1884," and that the Government had no power to dismiss a Civil servant, except upon the grounds, and after the enquiry, which that Statute prescribes.

Upon the 14th July 1896, the present suit was brought by the Respondent against the Appellant, who had been duly appointed to be sued as nominal Defendant on behalf of the Government of the Colony. The declaration sets forth the employment of the Respondent as a Civil servant, and the fact that he was not dismissed in the manner and on the terms prescribed by the Civil Service Act of 1884; and it concludes with a claim for the sum of 6,160*l.* as damages.

By his third plea in defence, the Appellant maintained that the services and employment of the Respondent in the declaration mentioned, "were the services of a person employed in the "public service within the meaning of the Act "59 Victoria, No. 25, Section 58, and the alleged "grievances in the declaration mentioned were "the exercise by the said Government of the right "and power of the Crown, in the said Section of "of the said Act mentioned, to dispense with "the services of any person employed in the said "public service and not otherwise."

The Statute upon which the plea is founded, the short title of which is the "Public Service "Act of 1895," was passed upon the 23rd December 1895, five months after the summary dismissal of the Respondent. The 58th section enacts that, "Nothing in this Act, "or in the Civil Service Act of 1884, shall be "construed or held to abrogate and restrict the "right of the Crown as it existed before the "passing of the said Civil Service Act, to "dispense with the services of any person "employed in the Public Service."

The Respondent demurred to the third plea, and the Appellant joined in the demurrer, which was then heard before the Supreme Court of the Colony. On the 26th April 1897, the majority of the Court, consisting of Darley C. J. and

Owen J., gave judgment for the Respondent, *dissentiente* Stephen J. Their Lordships have come to the conclusion that the decision of the majority was right, and they approve of the reasons which were assigned for it in the opinion delivered by Darley C. J.

It was argued for the Appellant, that the provisions of Section 58, being declaratory, must of necessity be enforced by the Courts of the Colony, in every case whether arising before or after the date of their enactment; and consequently that, the present case having been brought before the Supreme Court after the 23rd December 1895, when the Public Service Act 1895 became law, the summary dismissal of Respondent must be held to have been within the power of the Government, although on the 30th June 1895, when it took place, such act of dismissal may have been illegal, and might then have given the Respondent a good cause of action. It may be true that the enactments are declaratory in form; but it does not necessarily follow that they are therefore retrospective in their operation, and were meant to apply to acts which had been completed, or to interests which had vested before they became law. Neither the context of the Statute, nor the terms of the clause itself, appear to their Lordships to favour that result.

Section 58 is the last of a group of ten clauses which are collected under the statutory heading, "Dismissals, Removals, &c.," which is part of the Statute, and must be taken into account in construing its provisions. Leaving Section 58 out of view in the meantime, the other clauses of the group deal exclusively with the dismissal, removal or punishment of officers permanently employed in the public service, in consequence of misconduct committed after the commencement of the Act of 1895. Section 58 is

complementary of these provisions, and restores the power of the Crown, which was taken away by the Act of 1894, to dismiss at pleasure, and without cause assigned. The right or power which it restores is "to dispense with the "services of any person employed in the public "service." Can these words be reasonably construed so as to include persons who are not employed in the public service, and who, like the Respondent, had ceased to be so before its power of summary dismissal was given back to the Crown? In the opinion of their Lordships, the words of the clause as they stand, do not admit of that construction. Counsel for the Appellant were, by the exigencies of their case driven to maintain the contrary, and they accordingly argued that the clause ought to be read in the same way as if after "any person "employed in the public service" there had been inserted "or who, before the passing of this Act "had been dismissed from the public service." The words of the clause, according to their ordinary and natural meaning, refer to persons who are employed in the public service; and neither in Section 58, nor in the context of the Act, is there to be found any expression which can qualify that meaning, and make them refer to persons who had been, but had ceased to be employed, before the Act came into existence.

Their Lordships are unable to discover the least analogy between the enactments which require to be construed in this appeal, and those which were under the consideration of the Court in *The King* v. *Inhabitants of Dursey* (3 B. and Ad. 455), and in *Attorney-General* v. *Theobald* (24 Q.B.D. 557), which were much relied on in Appellant's argument. It does not seem to be very probable, that the Legislature should intend to extinguish, by means of retrospective enactment, rights and interests which might have already

vested in a very limited class of persons, consisting, so far as appears, of one individual, namely the Respondent. In such cases, their Lordships are of opinion that the rule laid down by Erle C. J. in *Midland Railway Company* v. *Pye* (10 C.B., N.S. 191) ought to apply. They think that, in a case like the present, the learned Chief Justice was right in saying, that a retrospective operation ought not to be given to the statute, "unless the intentions of the "Legislature that it should be so construed is "expressed in plain and unambiguous language, "because it manifestly shocks ones sense of "justice that an act legal at the time of doing "it should be made unlawful by some new "enactment." The *ratio* is equally apparent when a new enactment is said to convert an act, wrongfully done at the time, into a legal act, and to deprive the person injured of the remedy which the law then gave him.

Their Lordships do not suggest that the language of Section 58 is, in any sense, ambiguous. On the contrary, its enactments appear to them to have plain reference to persons who are actually employed in the public service at and after the date of the Act of 1895, and to those persons only. In their opinion, no construction is possible, which would extend the enactments to persons who had ceased to be employed in the Public Service before the date of the Act, without reading into the clause words which are not implied, and are not to be found there.

Their Lordships will therefore humbly advise Her Majesty to affirm the judgment appealed from. The Appellant must pay to the Respondent his costs of this appeal.